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NORTHERN DISTRICT OF CALIFORNIA

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10
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behalf of all others similarly situated*

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH STEVENSON, on behalf of
16 herself and all others similarly situated,

17 Plaintiff,

18 v.

19 EXPEDIA, INC., HOTELS.COM LP;
TRAVELOCITY.COM LP;; SABRE
20 HOLDINGS CORPORATION;
PRICELINE.COM INCORPORATED;
BOOKING.COM B.V.; BOOKING.COM
21 (USA), INC.; ORBITZ WORLDWIDE, INC.;
HILTON WORLDWIDE INC.; STARWOOD
22 HOTELS & RESORTS WORLDWIDE, INC.;
MARRIOTT INTERNATIONAL, INC.;
23 TRUMP INTERNATIONAL HOTELS
MANAGEMENT, LLC; KIMPTON HOTEL &
24 RESTAURANT GROUP, LLC;
INTERCONTINENTAL HOTELS GROUP
25 RESOURCES, INC.; and JOHN DOES 1-100,

26 Defendants.

C 12
No. 5353

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

LB

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1 Plaintiff, Elizabeth Stevenson, by and through her attorneys, on behalf of herself and all
2 others similarly situated, brings this Class Action Complaint against Expedia, Inc. (“Expedia”),
3 Hotels.com LP (“Hotels. com”), Travelocity.com LP (“Travelocity”), Sabre Holdings Corporation
4 (“Sabre Holdings”), Booking.com B.V., Booking.com (USA), Inc. (Booking.com B.V. and
5 Booking.com (USA), Inc. will be referred to as “Booking.com”), Priceline.com, Inc. (“Priceline”),
6 and Orbitz Worldwide, Inc. (“Orbitz”) (collectively, the “Online Travel Company” (“OTC”)
7 Defendants”), and Hilton Worldwide, Inc. (“Hilton”); Marriott International, Inc. (“Marriott”);
8 Trump International Hotels Management, LLC (“Trump”); InterContinental Hotels Group
9 Resources Inc. (“InterContinental”), Starwood Hotels & Resorts Worldwide, Inc. (“Starwood”),
10 and Kimpton Hotel & Restaurant Group, LLC (“Kimpton”) (collectively, the “Hotel Defendants”)
11 and alleges, based upon personal knowledge as to herself and her own acts, and as to all other
12 matters upon information and belief, as follows:

13 **I. NATURE OF ACTION**

14 1. Plaintiff purchased online hotel room reservations (“Room Reservations”) directly
15 from one or more of the OTC Defendants in the United States and stayed at one or more of the
16 Hotel Defendants based on these same purchases. Plaintiff brings this direct purchaser antitrust
17 action to challenge the OTC Defendants’ conspiracy with the Hotel Defendants to enter into,
18 maintain and/or enforce minimum resale price maintenance (“RPM”) agreements and also to
19 challenge the per se horizontal conspiracy entered into by the OTC Defendants. Plaintiff seeks
20 damages and equitable relief from Defendants under Section 1 of the Sherman Antitrust Act, 15
21 U.S.C. § 1.

22 2. The OTC Defendants are among the dominant online travel companies that act as
23 retailers for Room Reservations in the United States. Here, the OTC Defendants conspired with
24 the Hotel Defendants and agreed to impose an RPM scheme that would fix the retail price for
25 Room Reservations and maintain “Rate Parity” on the rate of the room itself at the price the
26 Hotel Defendants were selling the Room Reservation (“Rack Rates”) and restrain competition
27 for Room Reservations (“OTC-Hotel Agreements”) in the market for online hotel reservations.

1 The OTC-Hotel Agreements included express terms to set, maintain, and enforce minimum
2 Room Reservation prices at the Rack Rates. The OTC-Hotel Agreements restrained price
3 competition by requiring the Hotel Defendants to impose, amend, enforce, and/or heighten
4 enforcement of minimum resale price maintenance agreements with respect to price-cutting
5 OTCs, and/or to prevent OTCs from discounting Room Reservations below the Rack Rates.

6 3. Pursuant to the OTC-Hotel Agreements, the Hotel Defendants were charged with
7 enforcing the RPM scheme against OTCs that attempted to charge lower than the Rack Rates.
8 The OTC-Hotel Agreements were part of an anti-competitive scheme under which the OTC
9 Defendants leveraged their substantial market power and dominance to induce the Hotel
10 Defendants into agreeing to do one or more of the following: (a) impose minimum resale price
11 maintenance agreements on the OTCs; (b) enforce the OTC-Hotel Agreements as to the OTCs;
12 and/or (c) refuse to supply or cut off the supply of rooms to price-cutting competing OTCs.

13 4. As a result of the concerted RPM scheme entered into by the OTC and Hotel
14 Defendants, Room Reservations will not be sold to Plaintiff and members of the Class for less
15 than the Rack Rate. Because all of the OTC Defendants have the same clause in most or all of
16 their contracts, whether oral or written, none of the OTC Defendants compete with any of the
17 other OTC Defendants on price, and the retail rates for Room Reservations are set at Rack Rates
18 and thus are virtually identical amongst the OTC Defendants and with each Hotel Defendant the
19 OTC Defendants contract with.

20 5. Rate Parity dates back nearly ten years, according to Hotel Marketing.com, a trade
21 website. Prices set by the OTC and Hotel Defendants at the Rack Rate has been admitted to be
22 “... a standard industry practice” by Nancy St. Pierre, spokesperson for Sabre Holdings, the
23 operator of Travelocity.com.¹ Kimberly Hutcherson, director of sales for a Hampton Inn (a
24
25
26

¹ Karin Robinson-Jacobs, “Practice that holds rates steady among Hotel Defendants, travel sites coming under fire,” Dallas Morning News (Nov. 16, 2010), reprinted at <http://hsmaidfw.blogspot.com/> (last accessed September 11, 2012).

Hilton brand) in the Dallas area is a believer in Rate Parity because it “leaves the brand [the Hotel] with the control of the rate.²

6. The Hotel Defendants enforce Rate Parity because otherwise the OTC Defendants would drop them lower in the search results on their online sites (“Back-End Placement”) which means a significant loss of revenue for the Hotel Defendant since the OTC Defendants control at least 40 percent of the Hotel Defendants’ bookings.³

7. The Rack Rate is a price-fixed and uniform rate charged by the OTC Defendants with each Hotel Defendant Agreement. Any “best price” guarantees offered by the OTC Defendants are a sham because they know all prices offered for any particular Hotel Defendant will be the same price whether offered by the Hotel Defendant or any of the OTC Defendants.

8. Absent Defendants' anti-competitive and deceptive conduct, Plaintiff and the other Class members would have paid less for each of the Room Reservations purchased during the Class Period. The direct consequence of Defendants' unlawful conduct was that Plaintiff and other Class members were overcharged on their purchases of Room Reservations throughout the Class Period. Plaintiff thus seeks damages and equitable relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, for violations of Section I of the Sherman Antitrust Act, 15 U.S.C. § 1, and for violation of CAL. BUS. & PROF. CODE § 17500 *et seq.*

II. PARTIES

A. Plaintiff

9. Plaintiff Elizabeth Stevenson is a resident and citizen of South Carolina who made at least one direct purchase from an OTC Defendant for a stay at a Hotel Defendant and has been damaged as a result of the conduct alleged.

B. Defendants

10. Defendant Expedia, Inc. is a Delaware corporation with its principal place of 333
108th Avenue NE, Bellevue, Washington 98004.

² *Id.*

3 *Id*

1 11. Defendant Hotels.com LP is an affiliate of Expedia. Hotels.com LP is a Texas
2 limited partnership with its headquarters located at 10440 North Central Expressway, Suite 400,
3 Dallas, Texas 75231.

4 12. Defendant Travelocity.com LP is a Delaware limited partnership with its principal
5 place of business located at 3150 Sabre Drive, Southlake, Texas 76092. Travelocity is owned by
6 Defendant Sabre.

7 13. Defendant Booking.com B.V. is a company based in Amsterdam, the Netherlands,
8 with its principal place of business at Herengracht 597, 1017 CE, Amsterdam, Netherlands.
9 Booking.com B.V. owns and operates Booking.com, the leading worldwide online Room
10 Reservations agency by room nights sold, attracting over 30 million unique visitors each month via
11 the Internet from both leisure and business markets worldwide. Booking.com B.V. is a wholly
12 owned subsidiary of Priceline.com Incorporated.

13 14. Defendant Booking.com (USA), Inc. is a Delaware corporation with its primary
14 place of business located at 100 William Street, Suite 750, New York, New York 10038.
15 Booking.com (USA), Inc. is a wholly owned subsidiary of Priceline.com Incorporated.

16 15. Defendant Priceline.com Incorporated is a Delaware corporation with its primary
17 place of business located at 800 Connecticut Avenue, Norwalk, Connecticut 06854.

18 16. Defendant Orbitz Worldwide, Inc. is a Delaware corporation and its corporate
19 headquarters are located at 500 W. Madison Street, Suite 1000, Chicago, Illinois 60661.

20 17. Defendant Sabre Holding Corporation, incorporated in Delaware, is headquartered
21 at 3150 Sabre Drive, Southlake, Texas 76092.

22 18. Defendant Intercontinental Hotels Group Resources, Inc. is a Delaware corporation
23 with its primary place of business located at 3 Ravinia Drive, Suite 100, Atlanta, Georgia 30346-
24 2149.

25 19. Defendant Starwood Hotels & Resorts Worldwide, Inc. is a Maryland corporation
26 with its principal place of business at One Star Point, Stamford, Connecticut 06902. Starwood's
27
28

1 hotels are primarily operated under the brand names St. Regis®, The Luxury Collection®,
2 Sheraton®, Westin®, W®, Le Meridien®, Four Points® by Sheraton, Aloft® and Element®.

3 20. Defendant Marriott International, Inc. is a Delaware corporation with its principal
4 place of business at 10400 Fernwood Road, Bethesda, Maryland 20817-1102.

5 21. Defendant Trump International Hotels Management, LLC, doing business as the
6 Trump Hotel Collection, is a Delaware limited liability company headquartered at 725 Fifth
7 Avenue, New York, New York 10022.

8 22. Defendant Hilton Worldwide, Inc. is a Delaware company doing business as Hilton
9 Hotels & Resorts with its primary place of business located at 7930 Jones Branch Drive, McLean,
10 Virginia 22102.

11 23. Defendant Kimpton Hotel & Restaurant Group, LLC is a Delaware limited liability
12 company with its principal place of business located at 222 Kearny Street, Suite 200, San
13 Francisco, CA 94108.

14 III. AGENTS AND CO-CONSPIRATORS

15 24. Various other persons, firms and corporations, not named herein as Defendants have
16 participated as co-conspirators with the Defendants and have performed acts and made statements
17 in furtherance of the conspiracy. Some of these firms are as yet unidentified. The acts alleged
18 against the Defendants in this Complaint were authorized, ordered, or done by their officers,
19 agents, employees, or representatives, while actively engaged in the management and operation of
20 Defendants' businesses or affairs.

21 25. Each Defendant acted as the principal, agent, or joint venturer of, or for, other
22 Defendants with respect to the acts, violations, and common course of conduct alleged by Plaintiff.

23 26. Whenever this complaint refers to an act, deed or transaction of a corporation or
24 entity, the complaint is alleging that the corporation or entity engaged in the act, deed or
25 transaction by or through its officers, directors, agents, employees or representatives while they
26 were actively engaged in the management, direction, control or transaction of the corporation or
27 entity's business or affairs.

IV. JURISDICTION AND VENUE

27. Plaintiff brings this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, to recover treble damages, equitable relief, costs of suit and reasonable attorneys' fees for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject matter jurisdiction is proper pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a), and 28 U.S.C. §§ 1331 and 1337, because the action arises under the laws of the United States.

28. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is licensed to do business or is doing business in this judicial district.

29. This Court has personal jurisdiction over each Defendant because, *inter alia*, each Defendant: (a) transacted business throughout the United States, including in this District; (b) sold Hotel Room Reservations throughout the United States, including in this District; (c) had substantial contacts with the United States, including in this District; and/or (d) was engaged in an illegal price-fixing conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

30. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of this Court is proper pursuant to Northern District of California Local Rule 3-2(d) because a substantial part of the events giving rise to the claims arose in this District.

V. SUBSTANTIVE ALLEGATIONS

A. The Hotel Defendants Rely on the OTC Defendants for Substantial Bookings

31. Through the Internet, the OTC Defendants offer consumers hotel rooms in many different hotels throughout the United States. The OTC websites offer convenient listings of available hotel rooms by city, allowing for easy consumer comparison of hotel rates and locations rather than jumping from one hotel website to another. These OTC Defendants offer their services to Hotel Defendants and consumers through two primary business models; the “Agency Model,” and the “Merchant Model.”

1 32. Under the Agency Model, OTCs charge a “service fee” to hotel operators on a
2 transaction basis for booking customers into rooms at a given hotel and the consumer pays the
3 hotel for the room directly. Under the Agency Model, the hotels should be setting-and the OTCs
4 should be requiring – a competitive price for Room Reservations to increase business and compete
5 against other OTC’s offering the same service. However, the Rack Rate is still utilized by all
6 Defendants under this model.

7 33. Beginning in and around the year 2000, the OTCs began the pervasive use of the
8 Merchant Model. The Merchant Model is a uniform, nationwide model which operates the same
9 for all OTC Defendants in all jurisdictions. Under this model, the OTC Defendants are the
10 merchants of record and are paid directly by the consumer. The OTC Defendants negotiate with
11 each Hotel Defendant for rooms on a net basis, paying the hotel a flat rate for each room sold. This
12 model provides control to each OTC Defendant to set the room price to the consumer, thereby
13 controlling its profit from the markup. However, all OTC Defendants still utilize the Rack Rate as
14 the minimum price charged to the consumer.

15 34. There is a “Wholesale Model,” utilized by smaller price-cutting OTCs which obtain
16 access to rooms through wholesalers. Wholesalers, or intermediaries between the OTCs and the
17 hotels, work directly with Hotel Defendants to obtain last minute blocks of rooms that need to be
18 filled. The wholesalers then make those rooms available to smaller OTCs at a wholesale rate. The
19 OTCs then sell the rooms to consumers at higher retail rates, keeping the difference as profit.
20 Under this Wholesale Model, the OTCs utilizing this should also be competing on price by
21 increasing or decreasing the margin added to the wholesale rates to set the retail rate to compete on
22 price. However, smaller OTCs that attempt this are cut off from purchasing rooms by the Hotel
23 Defendants.

24 35. The OTC Defendants have gained a dominant presence in the online sale of Room
25 Reservations. The OTC Defendants have become increasingly important to the Hotel
26 Defendants’ business – generating as much as 50% of some of the Hotel Defendants’ Room
27

1 Reservation traffic. Thus, the Hotel Defendants require access to the OTC Defendants'
2 distribution network.

3 **B. The OTC Defendants Use their Dominance in the Online Hotel Reservation Market
4 to Impose the RPM Scheme on each Hotel Defendant to Prevent Discounting**

5 36. As a result of their dominance, and knowing that the Hotel Defendants cannot
6 require access to their distribution network, the OTC Defendants devised an illegal anti-
7 competitive RPM scheme to combat new or more efficient internet retailers, including those that
8 obtained access to hotel rooms through the Wholesale Model, by exacting uniform agreements
9 from the Hotel Defendants. These uniform agreements, upon penalty of termination and as a
10 condition of doing business with the OTC Defendants, required that the Hotel Defendants ensure
11 that competing online retailers refrain from discounting from the Rack Rate and that the Hotel
12 Defendants charge no lower than the Rack Rates themselves.

13 37. While the OTC and Hotel Defendants have maintained that their negotiated rates are
14 confidential, in fact the agreements negotiated between each OTC and Hotel Defendant contain
15 Rate Parity and Most Favored Nation clauses and the various OTC Defendants actually have the
16 same wholesale or net rate with the Hotel Defendants.⁴ In addition, the OTC Defendants, while
17 allowed to make their own markup or margin, attempt to maintain Rate Parity on the rate of the
18 room itself.⁵

19 38. In fact, the OTC-Hotel Defendants Agreements went beyond "attempts" and are and
20 were part of an overall agreement to impose and enforce the RPM scheme. For example, in 2004,
21 multiple hotels, including Defendants Hilton and Kimpton, and OTC's, including Defendant
22 Priceline, met together in Las Vegas for EyeforTravel's second annual Revenue Management and
23 Pricing in Travel conferences.⁶ At the conference, Defendants Hilton, Kimpton and Priceline
24 discussed "rate parity" and "pricing strategies." In fact, Jimmy Shu, VP Revenue Management and

25 ⁴ Findings of Fact and Conclusions of Law, ¶ 13, City of San Antonio, Texas, et al. v. Hotels.com, et al., Civ. No. SA-06-CA-381-OG (W.P. Tex) (Doc. 1096), July 1, 2011.

26 ⁵ *Id.* at ¶ 14 and n.5.

27 ⁶ http://www.hotel-online.com/News/PR2004_2nd/May04_EyeForTravel.html (last accessed
28 August 17, 2012).

1 Distribution at Kimpton led a presentation to "address the issues associated with adapting rate
2 parity across all distribution channels" Eye for Travel has annually sponsored these conferences,
3 and the attendees have expanded to include nearly all of the Defendants.⁷

4 39. As part of the OTC-Hotel Defendants Agreements, the Hotel Defendants: required
5 that competing OTCs agree to raise and maintain retail prices at the Rack Rate; threatened OTCs
6 with legal action and/or refused to allow OTCs to sell Room Reservations if the Online Retailers
7 refused to price fix and maintain resale prices at the Rack Rate; and in some instances, the Hotel
8 Defendants required the wholesalers to stop providing rooms to price-cutting OTCs, such as
9 Skoosh.com, if they refused to price fix and maintain resale prices at the Rack Rate.

10 40. Skoosh has publicly complained that it tried to sell discounted Room Reservations
11 on its online travel site but was thwarted by the resale price maintenance scheme:

12 'We were openly discounting and hotels would email, call and
13 threaten legal action,' Skoosh told the BBC.

14 'Either we'd have to raise prices or take the hotels off our list,'
15 said Dorian Harris from Skoosh.⁸

16 41. The OTC Defendants regularly police the OTC websites to make sure that the
17 Hotel Defendants enforce Rate Parity. When discrepancies are found, the Hotel Defendants are
18 notified and they will normally foreclose the price-cutting OTC from selling their rooms unless
19 they raise their prices to the Rack Rate of that Hotel Defendant. The OTC-Hotel Defendant
Agreements require such actions.

20 42. For example, Defendant Sabre (which owns Defendant Travelocity) which has the
21 Rate Assured Hotel Program requires the Hotel Defendants to enforce the RPM scheme:⁹

22 For Suppliers
23 Sabre Rate Assured™ Hotel Program
24 Are you Rate Assured?

25 ⁷ <http://events.eyefortravel.com/travel-distribution-summit-north-america/past-attendees.php> (last
accessed August 17, 2012).

26 ⁸ <http://www.bbc.co.uk/news/business-11330463> (last accessed August 5, 2012).

27 ⁹ <http://dorian.skoosh.com/open-letter-to-f-t-c--chairman-jon-leibowitz/> (last accessed August 16,
2012).

1 Sabre Travel Network has already begun measuring properties to
2 validate rate parity across properties prior to the official launch. So
make sure your properties are rate compliant!

3 (b) If it is determined that a property is not providing rate parity in
4 the program, it will essentially be placed on “Probation” status.

5 (c) If a property is not providing rate parity in the subsequent
measurement, Sabre will consider the hotel “In Violation” ...

6 43. In fact, Sabre also runs a division called “Sabre Hospitality Solutions,” which
7 expressly markets and encourages hotels to adopt rate parity – in effect, the RPM scheme. *See,*
8 *e.g.*, <http://www.sabrehospitality.com/blog/2011-10-27/how-hotels-can-leverage-ota-relationships-without-killing-their-pricing-strategy>; <http://www.sabrehospitality.com/blog/2011-11-30/three-top-trends-in-hospitality-marketing-and-distribution-to-consider-when-planning-for-2012>.

11 44. Defendant Hilton required Skoosh’s wholesale supplier in the United States,
12 AlliedTPro, to entirely cut off its contract with Skoosh as a result of Skoosh’s discounting and
13 Defendant Hilton’s enforcement of its Agreement with the OTC Defendants. AlliedTPro wrote to
14 Skoosh: “Trust me I would welcome the additional business but cannot risk our contracts with
15 Hilton.”¹⁰

16 45. Defendant Trump expressly admitted it was enforcing the OTC-Hotel Agreements,
17 emailing Skoosh that: “if we do not maintain parity with all, we are threatened with poor
18 placement on sites and worst case ... removal of hotel from sales sites.... Expedia threatens if
19 Travelocity gets lower rate and vice-versa. It is a vicious cycle if we get out of parity.”¹¹

20 46. Defendant Intercontinental wrote to Skoosh “demanding that it follow Rate Parity”
or Skoosh would be cut off.

22 47. In 2003, Defendant Marriott announced “a sweeping overhaul of its transient
23 pricing, bringing parity to all Marriott distribution channels-offline and online.”¹² During the Class

24 _____
25 ¹⁰ <http://dorian.skoosh.com/open-letter-to-f-t-c--chairman-jon-leibowitz/> (last accessed August 15, 2012).

26 ¹¹ <http://dorian.skoosh.com/open-letter-to-william-baer-arnold-porter-llp/> (referring to Holiday Inn New York) (last accessed August 16, 2012).

27 ¹² <http://www.businesstravelnews.com/More-News/Marriott-Revamps-Pricing--Offers-Complete-Parity,-Curtails-Fixed-Consortia-Rates/?a-btn> (Last accessed August 17, 2012).

Period, Marriott was among the Hotel Defendants threatening Skoosh.com with legal action and/or the withdrawal of their Room Reservations if Skoosh.com did not maintain Rate Parity.

48. Defendant Starwood also enforces the RPM scheme. “In one email to a hotel discounter, an executive at Starwood, which runs Le Meridien, Westin, Wand Sheraton hotels, said: ‘Should a wholesaler decide to sell the rooms on a room only basis, he has to make sure that the per contract agreed minimum mark-up is guaranteed.’ The employee said the ‘violation’ of Starwood’s Best Rate Guarantee was ‘really serious’ and the breach was reported to the Brussels headquarters.¹³

49. Similarly, Kayak.com, which is a price comparison website, told Skoosh on several occasions that it had to “play the Orbitz game,”¹⁴ *i.e.*, maintain Rate Parity, or Kayak would no longer publish Skoosh’s prices. Kayak apparently felt pressured to enforce Rate Parity on behalf of the OTC Defendants because, for example, Orbitz accounted for 18.8% of Kayak’s total revenues and Expedia and its affiliates accounted for 24.9% of Kayak’s total revenues for the nine months ended September 30, 2010.¹⁵ After Skoosh reported the RPM scheme to governmental authorities, Kayak stopped publishing Skoosh’s prices on its price comparison site.

50. Each of these actions was taken directly because of the pressure the OTC Defendants were placing on Hotel Defendants to protect the OTC Defendants' margins by enforcing the RPM scheme. The Hotel Defendants enforced the RPM scheme because they feared losing access to the OTC Defendants' websites

51. Blink Booking, a mobile-only hotel booking service, echoed the claims of competing online retailers, saying: "We've long believed that the big online travel agents have been guilty of denying consumers the best prices – and that hotels' hands are tied by price parity agreements. The online travel market may appear to offer plenty of choice and competition, but

¹³ <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-face-inquiry-in-price-fixing-scandal.html> (last accessed August 17, 2012).

¹⁴ <http://dorian.skoosh.com/open-letter-to-steve-hafner-c-e-o-kayak-com/> (last accessed August 17, 2012).

¹⁵ <http://www.businessinsider.com/kayak-ipo-2010-11> (last accessed August 17, 2012).

1 the reality is that there are lots of different shop windows selling the same rooms at the same
2 prices – with those prices agreed through parity deals between the big groups and the big OTAs
3 [online travel agents].”¹⁶

4 52. The Hotel Defendants knew that the OTC Defendants would enforce the
5 Agreements or refuse to sell the Hotel Defendants’ rooms. For example, in 2009, Defendant
6 Expedia refused to list or sell Room Reservations from Choice Hotels. Expedia’s CEO and
7 President Dara Khosrowshahi explained:

8 ‘... As far as the discussions that we’ve had with Choice, we are
9 not doing business with Choice right now on a chain basis. We
don’t have a vast majority of Choice hotels on our side ...’

10 ... he added, ‘First of all, our primary goal is to have the broadest,
11 deepest set and highest quality set of inventory for the benefit of
our customers. And this doesn’t signal any kind of change in our
12 overall philosophy as far as how we work with our hotel partners
and what we’re looking at. It’s not really an issue of economics;
it’s more than [sic] issue of our wanting rate parity and inventory
13 parity for our customers.’

14 ‘When our customers come to Expedia, we want them to know
15 that they’re getting the best prices and certainly, we are insistent
on that. And to the extent that Choice doesn’t want to work under
those terms.[sic] We won’t be doing business with each other.
16 Those are the terms that we work with our others [sic] strategic
partners, they’re comfortable where they were comfortable with it.
[sic] So, its nothing usual from what I would say is typical
17 practice for us in most of our other OTA competitors so to
speak.’¹⁷

18 53. The OTC Defendants sought and obtained the agreement of the Hotel Defendants to
19 impose and enforce “Rate Parity,” which was a restraint on price competition for the OTC
20 Defendants’ benefit and not for any legitimate pro-competitive reason.

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25 ¹⁶ <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law-html> (last accessed August 16, 2012).

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27 ¹⁷ <http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-parity-its-customers> (last accessed September 11, 2012).

1 **C. The RPM Scheme Has Established the Rack Rate as the Price-Fixed Rate for the OTC
2 and Hotel Defendants**

3 54. As a result of the RPM Scheme, effectuated through the Agreements between the
4 OTC and Hotel Defendants, the online sales of Hotel Defendants' rooms are at the Rack Rate.

5 55. In the class certification Order (18-19) of the previously noted *City of San Antonio, et al. v. Hotels. com, et al.*, No. SA-06-CA-381-0G (W.D. Tex.), the cited deposition testimony
6 delineates virtually identical business practices of the OTC Defendants with respect to their
7 contracts with the Hotel Defendants, their uniform calculations of margins and sell rates.

8 56. In the *City of San Antonio* case, the Court determined, based upon deposition
9 testimony, that the margins of each of the OTC Defendants were identical to the other OTC
10 Defendants. It found almost without exception, the net rate and sell rate for a given room on a
11 given day are the same among the OTC Defendants because the agreements with the Hotel
12 Defendants all contain "parity" or "Most Favored Nation" ("MFN") clauses. This also makes
13 the [OTC] margins the same. *Id.* at 20, n.21 (citations to deposition testimony omitted).

14 57. Due to the MFN clauses utilized by all of the OTC Defendants in their agreements
15 with each Hotel Defendant, Rate Parity is guaranteed. Therefore, anyone accessing any Hotel
16 Defendant website and any OTC Defendant website for the same room, on the same date, at the
17 same hotel will find across-the-board identical minimum rates. The only occasional variation will
18 be a *higher* rate posted by one of the OTC Defendants.

19 58. Any Hotel Defendant seeking to draw in Reservations by offering lower prices or
20 extra points for rewards programs have been met with demands by the OTC Defendants to stop
21 competing with them and to adhere to the RPM Rack Rate Agreements.

22 59. As a result of the "success" of the RPM scheme, the OTC Defendants are confident
23 that all of the prices listed between them for the same room will be identical. Thus, they each offer
24 a near identical "best price" guarantee – knowing it is the only price available even among
25 competitors.

60. The RPM Agreements, and the scheme in restraint of trade, have harmed competition in the relevant market(s) and caused prices to be higher in the relevant market(s) than the prices would have been without the Agreements.

61. The uniform adoption and enforcement of Rate Parity and Most Favored Nation Clauses by the OTC Defendants was not the result of independent business judgments but the result of a horizontal *per se* price fixing agreement.

62. The RPM Agreements were specifically intended to protect the OTC Defendants from price competition from other highly efficient OTC retailers offering the same inventory and to protect them from competition by the Hotel Defendants. The Hotel Defendants entered into and enforced the RPM Agreements to maintain their favorable listings on the OTC Defendants' websites. Thus, all Defendants agreed to restrain competition by mandating higher price levels, cutting off price competition, and punishing any price cutters. This scheme substantially inflated prices to consumers like the Plaintiff and the Class.

63. The British Office of Fair Trade (“OFT”) recently issued a “Statement of Objections” alleging that Expedia, Inc. infringed competition through the very same price fixing agreements alleged here with respect to British hotel rooms. The Telegraph reported that Expedia admitted that “it has engaged in cartel conduct on breach of the law,” and is “providing information on its rivals under a ‘leniency deal’” with the British authorities.

VI. MONOPOLY/MARKET POWER

64. The relevant product market in this case is direct online retail sales of Room Reservations.

65. The relevant geographic market in this case is the United States.

66. By virtue of their power to control prices and exclude competition in the relevant market(s), the OTC Defendants at all relevant times possessed monopoly and/or controlling market power in the relevant market(s). The OTC Defendants and their subsidiaries hold over a 50 percent market share in the internet travel business market. Just Expedia and its subsidiaries alone account

1 for approximately 50% of the internet travel business market. Moreover the OTC Defendants
 2 possess a dominant share of the market(s) for online retail sales of Room Reservations.

3 **VII. ANTITRUST INJURY AND MARKET EFFECTS DUE TO
 4 DEFENDANTS' ANTICOMPETITIVE CONDUCT**

5 67. The overall effect of Defendants' RPM scheme has been to substantially
 6 foreclose and impair competition (and the threat of such competition) from lower-priced Room
 7 Reservations. As alleged above, had the Defendants not improperly foreclosed or stifled actual
 8 or potential competitors from competing in the market for Room Reservations, other actual or
 9 potential rival online retailers would have achieved much greater sales than they actually did (or
 10 threatened to do), given the lower prices that they charged (or could have charged upon entry),
 11 and would have posed a far greater competitive threat to the Defendants. Additionally, absent
 12 the Defendants' exclusionary conduct, barriers to entry to the market would have been lower,
 13 which: (a) would have made it easier for existing or new competitors to enter or expand their
 14 positions in the market for Room Reservations, and (b) would have caused existing or potential
 15 competitors to be attracted to the Room Reservation market because of the supracompetitive
 16 prices that the Defendants were charging. As a result, absent the Defendants' misconduct, the
 17 Defendants would have rationally perceived that there was a greater threat of potential
 18 competition in the relevant market if the Defendants did not reduce their supra-competitive
 19 prices.

20 68. The presence of unfettered competition from actual or potential competitors, which
 21 were selling lower-priced Room Reservations, would have forced the Defendants to lower the
 22 prices for their Room Reservations in order to remain competitive and/or to counter a perceived
 23 threat of additional entry.

24 69. During the relevant period, Plaintiff and the other members of the Class purchased
 25 Room Reservations directly from the Defendants. As a result of the Defendants' alleged illegal
 26 conduct, members of the Class were compelled to pay, and did pay, artificially inflated prices for
 27 the Room Reservations they purchased. Plaintiff would have been able to, *inter alia*, purchase
 28 less-expensive Room Reservations had potential competitors been able to engage in unfettered

1 competition. The prices that Plaintiff and the other Class members paid for Room Reservations
 2 during the Class Period were substantially greater than the prices that Plaintiff and the Class
 3 members would have paid absent the illegal conduct alleged herein because: (1) the prices of all
 4 Room Reservations were artificially inflated by the Defendants' illegal conduct; and (2) Class
 5 members were deprived of the opportunity to purchase Room Reservations from the Defendants'
 6 competitors at substantially lower prices. Thus, Plaintiff and the Class have, as a consequence,
 7 sustained substantial damages in the form of overcharges.

8 **VIII. CLASS ALLEGATIONS**

9 70. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this
 10 class action on behalf of herself and all members of the following class (the "Class"):

11 All persons and entities throughout the United States who paid for
 12 a room at a Defendant Hotel reserved through the OTC
 13 Defendants from January 1, 2000 through the present. Expressly
 14 excluded are (i) room reservations made as part of a package deal;
 15 or (ii) room reservations made without disclosure of the name of
 16 the hotel until after paying for the room reservation.

17 71. Plaintiff believes that the Class includes thousands of consumers and businesses
 18 across the United States, though the exact number and the identities of the Class members are
 19 currently unknown.

20 72. The members of the Class are so numerous that joinder of all Class members is
 21 impracticable.

22 73. Common questions of law and fact exist as to all members of the Class predominate
 23 over any questions affecting solely individual members of the Class. Nearly all factual, legal, and
 24 statutory relief issues raised in this Complaint are common to each of the members of the Class and
 25 will apply uniformly to every member of the Class. Among the questions of law and fact common
 26 to the Class members are:

27 a. whether Defendants engaged in agreements, contracts, combinations, and
 28 conspiracies, which had the purpose and/or effect of unreasonably restraining competition and
 29 limiting purchaser access to competing and lower-priced Room Reservations;

30 b. whether Defendants unreasonably restrained trade;

1 c. whether Defendants' anti-competitive contracts, combinations, and conspiracies
2 have caused Plaintiff and the other members of the Class and to suffer antitrust injury in the nature
3 of overcharges;

4 d. whether Defendants' unlawful conduct caused Plaintiff and other Class and
5 members to pay more for the Room Reservations than they otherwise would have paid;

6 e. the appropriate Class-wide measure of damages;

7 f. whether, and in what amount, Plaintiff and the other Class and members are entitled
8 to recover treble damages, court costs, and attorneys' fees;

9 g. whether Defendants' anti-competitive conduct is continuing, thus entitling the Class
10 and to injunctive relief to promote unrestrained trade and free and fair competition.

11 74. Plaintiffs' claims are typical of the claims of other members of the Class because
12 Plaintiff and every member of the Class have suffered similar injuries as a result of the same
13 practices alleged herein. Plaintiff has no interest adverse to the interests of the other members of
14 the Class.

15 75. Plaintiff will fairly and adequately represent and protect the interests of the Class.
16 Plaintiff has retained able counsel with extensive experience in class action litigation. The interests
17 of the Plaintiff are coincident with, and not antagonistic to, the interests of the other Class and
18 members.

19 76. The questions of law and fact common to the members of the Class predominate
20 over any questions affecting only individual members, including legal and factual issues relating to
21 liability and damages.

22 77. Plaintiff and other members of the Class have suffered damages as a result of
23 Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will retain
24 substantial funds received as a result of their wrongdoing, and such unlawful and improper conduct
25 shall, in large measure, go unremedied. Absent a class action, the members of the Class will not be
26 able to effectively litigate these claims and will suffer further losses, as Defendants will be allowed
27 to continue such conduct with impunity and retain the proceeds of their ill-gotten gains.

1 78. A class action is superior to other available methods for the fair and efficient
 2 adjudication of this controversy because joinder of all Class members is impracticable. Moreover,
 3 because the damages suffered by individual members of the Class are relatively small, the expense
 4 and burden of individual litigation make it impossible for members of the Class to individually
 5 redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a
 6 class action will eliminate the possibility of repetitious litigation. There will be no difficulty in the
 7 management of this action as a class action.

8 **IX. TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT
 9 CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS**

10 79. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth
 herein.

11 80. Plaintiff did not discover and could not have discovered through the exercise of
 reasonable diligence the existence of the claims sued upon herein until immediately prior to
 13 commencing this civil action.

14 81. Any applicable statutes of limitation have been tolled by Defendants' affirmative
 15 acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above
 16 reveal, and *inter alia*, as follows:

17 a. the OTC Defendants have testified in the *City of San Antonio* case that there
 18 is only an "industry average" in order to stay competitive;

19 b. the OTC Defendants have testified in the *City of San Antonio* case that hotels
 20 do not know the OTC Defendants' markups and, therefore, the hotels do not know the price
 21 actually paid by the consumer- this is manifestly untrue given the RPM Rack Rate Agreements;

22 c. the OTC Defendants have testified in the *City of San Antonio* case that the
 23 margin charged by the OTC Defendants is within their discretion – this is manifestly untrue given
 24 the RPM Rack Rate Agreements.

25 d. the OTC Defendants have testified in the *City of Antonio* case that the
 26 Merchant Model was described as a "facilitation fee" to cloak their markups -further hiding the
 27 true purpose and effect of the RPM Rack Rate Agreements.

82. Because of the self-concealing nature of Defendants' actions and their affirmative acts of concealment, Plaintiff and the Class assert the tolling of any applicable statutes of limitations affecting the claims raised herein.

83. Defendants continue to engage in their deceptive practices, and consequently, unwary consumers are injured on a daily basis by Defendants' unlawful conduct. Therefore, Plaintiff and the Class submit that each instance that Defendants engaged in the conduct complained of herein and each instance that a member of the Class purchased a Room Reservation constitutes part of a continuing violation and operates to toll the statutes of limitation in this action.

84. Defendants are estopped from relying on any statute of limitations defense because of their unfair or deceptive conduct.

85. Defendants' conduct was and is, by its nature, self-concealing. Still, Defendants, through a series of affirmative acts or omissions, suppressed the dissemination of truthful information regarding their illegal conduct, and have actively foreclosed Plaintiff and the Class from learning of their illegal, anti-competitive, unfair and/or deceptive acts.

86. By reason of the foregoing, the claims of Plaintiff and the Class are timely under any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling doctrine, and fraudulent concealment.

X. COUNTS

COUNT I

**VIOLATION OF 15 U.S.C. § 1
(AGREEMENTS UNREASONABLY RESTRAINING TRADE
AGAINST ALL DEFENDANTS)**

87. Plaintiff hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

88. The Agreements, and their enforcement, constitute contracts, combinations and conspiracies that substantially, unreasonably, and unduly restrain trade in the relevant market(s), and harmed Plaintiff and the Class thereby.

89. The Agreements cover a sufficiently substantial percentage of relevant market(s) to harm competition.

90. The Defendants are liable for the creation, maintenance, and enforcement of the Agreement under a per se, "quick look" and/or rule of reason standard.

91. The Defendants possess market power.

92. The Agreements harm competition by artificially raising and stabilizing prices.

93. There is no legitimate, pro-competitive business justification for the Agreements or any of them that outweighs their harmful effect. Even if there were some conceivable justification, the Agreements are broader than necessary to achieve such a purpose.

94. Plaintiff and members of the Class were injured in their business or property by the collusion and conspiracy alleged above which facilitated, enabled, assisted or furthered Defendants' substantial foreclosure and exclusion of competition in the relevant market(s).

95. Without limiting the generality of the foregoing, Plaintiff and the other members of the Class have been forced to pay higher prices for Room Reservations than they would have paid in the absence of Defendants' unlawful conduct.

COUNT II

**VIOLATION OF 15 U.S.C. 1
(HORIZONTAL PER SE AGREEMENT – AGAINST OTC DEFENDANTS)**

96. Plaintiff hereby incorporates each preceding and succeeding paragraph as though full set forth herein.

97. The OTC Defendants and their unnamed co-conspirators entered into and engaged in a conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act.

98. The conspiracy consisted of a continuing agreement, understanding and/or concerted action between and among the OTC Defendants and their unnamed co-conspirators to fix, maintain and/or stabilize prices for online Hotel Room Reservations. Defendants' conspiracy is a per se violation of the federal antitrust laws and is, in any event, an unreasonable and unlawful restraint of trade.

99. The OTC Defendants' conspiracy, and the resulting impact on the market for Online Hotel Room Reservations, occurred in and/or affected interstate commerce.

100. As a proximate result of the OTC Defendants' unlawful conduct, Plaintiff and the Class have suffered injury in that they have paid supra-competitive prices for Online Hotel Room Reservations during the Class Period.

RELIEF REQUESTED

WHEREFORE, Plaintiff, on her behalf and on behalf of the Class, prays for judgment, as follows:

- A. For an Order certifying this case as a class action against Defendants and appointing Plaintiff as Representative of the Class;
 - B. For money damages against Defendants and in favor of Plaintiff and the Class on all claims asserted in this Complaint;
 - C. For costs of suit incurred herein;
 - D. For prejudgment interest to the extent allowed by law;
 - E. For penalties as allowed by law;
 - F. For permanent injunctive relief to enjoin further violations of the law; and
 - G. For such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues triable of right by jury.

DATED: October 17, 2012

HAGENS BERMAN SOBOL SHAPIRO LLP

By:

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